

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

FILED
MAR 06 2006


CLERK

JASON BOYLES,

CIV 04-4134

Petitioner,

-vs-

MEMORANDUM OPINION
AND ORDER

DOUGLAS WEBER, Warden
South Dakota State Penitentiary,

Respondent.

Petitioner, Jason Boyles, filed an Application for Writ of Habeas Corpus by Person in State Custody, pursuant to 28 U.S.C. § 2254. The Court ordered that an evidentiary hearing be held in this case. Petitioner caused to be issued a subpoena to Inez Duran, a non-party witness, to appear to testify in the evidentiary hearing on Monday, March 6, 2006 at 3:30 p.m. The subpoena was served on Ms. Duran on February 10, 2006. The hearing began promptly at 3:30 p.m. Ms. Duran did not appear in accordance with the subpoena. Ms. Duran resides more than 100 miles from the Courthouse where the evidentiary hearing was scheduled. Petitioner showed a substantial need for the testimony of Ms. Duran that cannot be otherwise met without undue hardship and has assured the Court that Ms. Duran will be reasonably compensated. *See* Fed.R.Civ.P. 45(c)(3)(A)(ii) and (iii). Petitioner's counsel informed the Court that Ms. Duran informed him before the hearing that she did not intend to comply with the subpoena. The Court finds Ms. Inez Duran in contempt of court pursuant to Federal Rule of Civil Procedure 45(e) and a warrant will be issued for her arrest to appear at the hearing. Accordingly,

IT IS ORDERED:


1. That Inez Duran is in contempt of court for failure to obey the subpoena issued from this Court on February 1, 2006 and served on her on February 10,

2006, Doc. 52, which required her attendance at the evidentiary hearing scheduled for Monday, March 6, 2006 at 3:30 p.m.

2. That a warrant shall be issued for the arrest of Inez Duran to appear at the Federal Courthouse in Sioux Falls, South Dakota, for the evidentiary hearing scheduled in this case, which commenced at 3:30 p.m. on Monday, March 6, 2006.

Dated this 6th day of March, 2006.

BY THE COURT:


Lawrence L. Piersol
Chief Judge

ATTEST:

JOSEPH HAAS, CLERK

BY: Shelly Margolis
(SEAL) DEPUTY